IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17942 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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YASINKHAN @ ILIYAS NABIKHAN PATHAN - Petitioner(s)
Versus
THE COMMISSIONER OF POLICE AHMEDABAD CITY, & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/11/2006

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of detention dated 23.05.2006 passed by the Commissioner of Police, Ahmedabad City under sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, “the PASA Act”).

2.0 Learned Advocate for the petitioner has invited my attention to the order of detention

dated 23.05.2006 as well as the grounds supplied therein. In the grounds of detention, six criminal cases have been shown as registered against the petitioner. In the impugned order, it is also stated that the authority has recorded the statement of witnesses.

2.1 Learned Advocate for the petitioner has submitted that on the basis of the aforesaid criminal cases registered against the detenu, the Authority has come to the conclusion that the activities of the detenu are detrimental to the maintenance of 'public order' and hence, the petitioner falls within the definition of 'dangerous person' within the meaning of Section 2(c) of the PASA Act. The Authority has, therefore, passed the order of detention against the petitioner.

2.2 Learned Advocate for the petitioner has further submitted that the detaining Authority has arrived at the subjective satisfaction on the basis of irrelevant materials. He has further

submitted that from the incidents which have been narrated in the detention order, there may be only breach of 'law and order' situation and not 'public order'. In support of the same learned Advocate for the petitioner has placed reliance on a decision of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police & Ors."*** reported in 1995 (2) GLR 1268 wherein at Para-8, the Apex Court has observed as under;

> "**8.** The Act has defined "dangerous person" in clause © of Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to the *The Law Lexicon by P. Ramanatha Aiyar, Reprint Ed. (1987), p. 499,* 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in *Aiyar's Judicial Dictionary, 10th Edn., p. 485*. it does not refer to the frequency of the occasions but to the invariability of

practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a “dangerous person” unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In *Gopalanchari v. State of Kerala,* AIR 1981 SC 674 this Court had an occasion to deal with expressions like “bad habit”, 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in *Vijay Narain Singh v. State of Bihar,* 1984 (3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression “dangerous person” as defined in clause © of Sec.2 of the Act. There should be positve material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. Or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec.2(cA) of the Act.

2.3 Learned Advocate for the petitioner has further placed reliance on a Division Bench judgment of this Court in the case of ***"Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others"*** reported in 2000 (1) GLH 393 wherein at Para-22, it was held under,

> **"22**. So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, **having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia Vs. State of Bihar reported in AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of 'law and order' and not 'public order'.** The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since, in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of 'public order', the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

3.0 Learned A.G.P. has supported the order of

the detaining Authority and has submitted that the registration of six criminal offences and the statement of witnesses against the detenu goes to show that the detenu was involved in such serious activities which could be said to be prejudicial to the maintenance of 'public order'. Learned Counsel further submitted that there is sufficient material before the detaining authority to pass the order of detention and, therefore, no interference is required by this Court in exercise of its power under Article 226 of the Constitution of India.

4.0 Heard learned Counsel for the parties. After perusal of the documents on record, I am of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record. I have also considered the factual and legal aspects emerging from the record of the petition and the rival submissions. Taking into consideration the facts and circumstances of the case and the allegations made against the detenu, it can be

said that there shall be disturbance of only 'law and order' and not 'public order'. Moreover, in view of the judgments of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh"*** (Supra) as well as judgment of this Court in the case of ***"Ashokbhai Jivraj @ Jivabhai Solanki"*** (Supra), the order of detention cannot be sustained and deserves to be quashed and set aside.

5.0 In the result, this petition is allowed. The impugned order dated 23.05.2006 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. The detenu is directed to be set at liberty forthwith, if not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs. Direct service permitted.

(K. S. JHAVERI, J.)

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